

REMARKS

The present amendment is submitted in response to the Office Action mailed March 15, 2005 and the Office Communication of October 4, 2005. By this amendment, new claims 11-22 have been added to recite aspects of the invention to which Applicant is believed to be entitled. In view of the above amendments and the following remarks, reconsideration and allowance of this application are respectfully requested.

35 USC § 112

Claims 6-8 and 10 were rejected under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter. Applicants have amended the claims in a manner which is believed to overcome this rejection.

35 USC § 102(b)

Claims 1-8 stand rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 4,073,533 to De brey et al. (hereinafter De brey). It is respectfully submitted that the present invention as claimed is patentably distinguishable over De brey. For example, with regard to independent Claim 1, De brey fails to teach or suggest the recited "first and second container members operatively connected to each other and adapted for relative movement between an open position for receiving the pastry item and an approximated position for substantially enclosing the pastry item". In contrast thereto, the grasping elements 25,26 are not dimensioned to move to an approximated position to substantially enclose a pastry item. Rather, the partial spherical configuration of the grasping elements 25,26 are not capable of substantially enclosing an item. In addition, De brey fails to teach or suggest the recited "first and second

container members including generally disc-shaped support walls” as also recited in independent claim 1. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 1-8 stand rejected under 35 USC § 102(b) by U.S. Patent No. 4,606,569 to Dunn et al. (hereinafter Dunn). It is respectfully submitted that the present invention as claimed is patentably distinguishable over Dunn. For example, Dunn fails to teach or suggest the recited “said first and second container members including generally disc-shaped support walls”. Such arrangement of the support walls provides significant advantages with respect to supporting and containing a disc-shaped item, e.g., a cookie. In contrast, Dunn discloses a pair of tongs for grasping food. One tong is in the shape of the spoon 19 while the other tong is in the shape of a ladle bowl 15. The spoon or bowl configuration fails to realize the advantages of supporting, e.g., a disc shaped cookie. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 1-5, 9 and 10 stand rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,988,048 to Hunter et al. (hereinafter Hunter). It is respectfully submitted that the present invention as claimed is patentably distinguishable over Hunter. For example, with regard to independent claim 1, Hunter fails to teach or suggest the recited “first and second container members operatively connected to each other and adapted for relative movement between an open position for receiving the pastry item and an approximated position for substantially enclosing the pastry item”. Hunter incorporates a basket for frying food with an independent lid. With regard to independent claim 9, Hunter fails to teach or suggest the recited “providing a pastry holder including opposed first and second container members operatively connected to each other and adapted for relative movement between respective open and

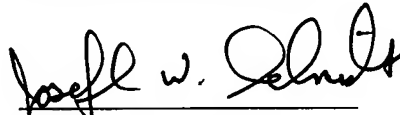
approximated positions". As indicated hereinabove, Hunter discloses a basket with a separable lid. In addition, Hunter also fails to teach or suggest the recited "manipulating a handle operatively connected to said pastry holder to cause said first and second container members to assume said open position". There is no handle disclosed in Hunter capable of this function. Accordingly, in view of the foregoing, withdrawal of this rejection is respectfully requested.

Claims 1-5, and 9 were rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 1,487,909 to Andrews (hereinafter Andrews). With regard to independent Claim 1 and Claims 2, 4-7, Andrews fails to teach or suggest does not teach or suggest the recited "handle member depending from said holder member... said handle member adapted to be manipulated to cause said first and second containers to move between the open and approximated positions. In contrast, Andrews is devoid of a handle which can function in this manner. With regard to independent claim 9, Andrews fails to teach or suggest the recited, "first and second container members operatively connected to each other and adapted for relative movement between respective open and approximated positions" and the steps of "manipulating the handle . . . to cause said first and second container members to assume said open position . . . and said approximated position. Accordingly, in view of the foregoing, withdrawal of this rejection is respectfully requested.

Conclusion

It is respectfully submitted that the present invention is directed to patentable subject matter and that none of the references of record, considered individually or in combination, in whole or in part, disclose or suggest the present invention as claimed. Therefore, all of the claims now pending in this application, namely, 1, 2, 4-7, 9, and 10, are now in condition for allowance. Accordingly, early and favorable consideration of this application is respectfully requested. Should the examiner believe that a telephone or personal interview may facilitate resolution of any remaining matters, she is respectfully requested to contact Applicants' Attorney at the number indicated below.

Respectfully submitted,



Joseph W. Schmidt
Reg. No. 36,920
Attorney for Applicants

Send Correspondence To:

Joseph W. Schmidt, Esq.
CARTER DeLUCA FARRELL & SCHMIDT, LLP
445 Broad Hollow Road – Suite 225
Melville, N.Y. 11747
Phone: (631) 501 5703
Fax: (631) 501 3526